

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-121840-09

Date: **July 31, 2009**

LEGEND

Parent =

Sub 1 =

Sub 2 =

State X =

Date 1

Date 2

Date 3

Date 4

Date 5

Date 6

Dear _____ :

This is in reply to correspondence, submitted on your behalf by your authorized representative, requesting a ruling under § 1.1502-75(b)(3) of the Income Tax Regulations (the “Regulations”). Additional information was received subsequently.

FACTS

Parent is a State X corporation.

Parent is the common parent of a consolidated group of corporations (“The Parent Group”) that files a federal income tax return.

Sub 1 and Sub 2 are wholly owned subsidiaries of Parent. Parent has no other subsidiaries. Beginning with its taxable year ended Date 1, Parent filed a consolidated Federal income tax return for itself and Sub 2 by filing Form 1120 and Form 1122 (Authorization And Consent of Subsidiary Corporation To Be Included In A Consolidated Income Tax Return (executed by Sub 2)). Parent continued to file consolidated Federal income Tax returns including Sub 2 for its taxable year ending Date 2, Date 3, Date 4, and Date 5.

On Date 6, it was discovered by the IRS that Sub 1 had been omitted from the Parent’s consolidated federal income tax return for the tax years ended Date 1, Date 2, Date 3, Date 4 and Date 5. The statute of limitations is closed for Sub 1 for the years ending Date 1, Date 2 and Date 3.

Parent has requested that Sub 1 be deemed to have filed a Form 1122 (“The Election”) for the (Parent Group) taxable year ended Date 1, and thus, be able to join in Parent’s consolidated return for the tax year ending Date 1.

REPRESENTATIONS

- (1) Parent, Sub 1 and Sub 2 were eligible to file a consolidated return for the year ended Date 1.
- (2) The omission of Sub 1 from the Parent Group return was the result of a mistake of law.
- (3) Granting the relief request will not result in Parent, Sub 1 and Sub 2 having a lower tax liability in the aggregate for all taxable years affected by The Election than those corporations would have had if The Election had been in fact timely made.

LAW

Section 1.1502-75(a)(1) of the Regulations provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents to the Regulations under section 1502.

Section 1.1502-75(b)(1) of the Regulations provides that the consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 In the manner specified in § 1.1502-75(h)(2) of the Regulations.

Section 1.1502-75(h)(2) of the Regulations provides that if, under the provisions of § 1.1502-75(a)(1) of the Regulations, a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(3) of the Regulations provides that if any member has failed to join in the making of a consolidated return, then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2) of the Regulations, and thus joined in the making of a consolidated return for such year.

RULINGS

Based on the facts and information given and representations made, it is concluded that:

- (1) Sub 1 shall be treated as if they had filed a Form 1122 for the taxable year ended Date 1, for purposes of § 1.1502-75(h)(2) of the Regulations, and thus will be treated as having joined in the making of the consolidated return for such year. See § 1.1502-75(b)(3) of the Regulations.
- (2) Parent will file an amended consolidated federal income tax return for the year ended Date 4 and all subsequent years to include the income and

deductions of Sub 1.

PROCEDURAL

Within 45 days of the date on this letter, Parent shall file amended returns for the year ended Date 4 and all subsequent years necessary, to include Sub 1 in the Parent Group return for those years.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alfred Bishop
Branch Chief, Branch 6, Office of Associate Chief
Counsel (Corporate)